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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,493	11/24/2003	John D. Wydner	01-0810.07	4551
21491	7590	10/21/2004	EXAMINER	
LANIER FORD SHAVER & PAYNE P O BOX 2087 HUNTSVILLE, AL 35804				REIS, TRAVIS M
		ART UNIT		PAPER NUMBER
		2859		

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,493	WYDNER, JOHN D.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Travis M Reis	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 20040419, 20040806.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "22" has been used to designate both an extension arm and a serrated edge in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10, 15, 16, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Jio (U.S. Patent 5179768).

Jio discloses a plastic apparatus (Abstract) comprising an integrally formed unitary clip member (Figure 2) having two extension arms (2, 3) connected by a tensioned member (4) therebetween; wherein each of said extension arms has an engagement end and a remote end and an outer surface and an inner surface; and wherein said tensioned member is located generally along said apparatus about two thirds of the distance from said

engagement end to said remote end from said engagement end (Figure 3); wherein said interior surface of each of said extension arms at their respective engagement ends has a surface treatment comprising a serrated edge (22, 32) for enhancing the frictional interaction between said apparatus and its point of attachment (Figure 2).

With respect to the preamble of the claims 10, 15, 16, & 18: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 ( CCPA 1951).

4. Claims 10, 15, 17, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatayan (U.S. Patent 4079765).

Hatayan discloses a plastic apparatus comprising an integrally formed unitary clip member (Abstract) having two extension arms (11, 12) connected by a tensioned member (10) therebetween (Figures 1 & 2); wherein each of said extension arms has an engagement end (13, 13A) and a remote end (14, 14A) and an outer surface and an inner surface (Figure 2); and wherein said tensioned member is located generally along said apparatus about two thirds of the distance from said engagement end to said remote end from said engagement end (Figure 2); wherein said interior surface of each of said extension arms at their respective engagement ends has a surface treatment comprising a scalloped edge (21) for enhancing the frictional interaction between said apparatus and its point of attachment (Figure 2).

With respect to the preamble of the claims 10, 15, 17, & 18: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the

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claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 ( CCPA 1951).

5. Claims 10 & 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Posey (U.S. Patent 3130463).

Posey discloses a metal apparatus (col. 1 line 59) comprising an integrally formed unitary clip member (10) (Figure 2) having two extension arms (27, 28) connected by a tensioned member (18) therebetween; wherein each of said extension arms has an engagement end and a remote end and an outer surface and an inner surface; and wherein said tensioned member is located generally along said apparatus about two thirds of the distance from said engagement end to said remote end from said engagement end (Figures 2 & 4).

With respect to the preamble of the claims 10 & 21: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 ( CCPA 1951).

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 5, 7-9, 12, & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jio in view of Bass (U.S. Patent 6264335).

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Jio discloses all of the instant claimed invention as stated above in the rejection of claims 10, 15, 16, & 18, including an exterior surface of each of said remote ends of each of said extension arms has a surface treatment for enhancing the frictional interaction between said apparatus and said user comprising a raised textured surface (21, 31) (Figure 3); and further including said integral tension member is curvilinear (Figure 2) so as to allow for sufficient flexing of said integral tensioned member to enable said apparatus to separate said engagement ends of said extension arms when said remote ends of said extension arms are forced toward one another. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed (i.e. to enhance bad weather and nighttime use of the apparatus) does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 ( 1987 ).

Jio does not disclose on an outer surface of each of said extension arms is a light-reflective sticker.

Bass discloses a light reflective marking clip (5) with light reflective stickers (1) attached to outer surfaces of each of said extension arms (Figure 4) in order to be easily locatable, wherein Webster's dictionary defines "sticker" as "one that adheres or causes adhesion." Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the light reflective stickers disclosed by Bass to make the clip disclosed by Jio in order that the clip made easily locatable.

8. Claims 1, 2, 4, 6, 9, 12, & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatayan in view of Bass.

Hatayan discloses all of the instant claimed invention as stated above in the rejection of claims 10, 15, 17, & 18, including said integral tension member is curvilinear (Figure 2) so

as to allow for sufficient flexing of said integral tensioned member to enable said apparatus to separate said engagement ends of said extension arms when said remote ends of said extension arms are forced toward one another.

Hatayan does not disclose on an outer surface of each of said extension arms is a light-reflective sticker.

Bass discloses a light reflective marking clip (5) with light reflective stickers (1) attached to outer surfaces of each of said extension arms (Figure 4) in order to be easily locatable, wherein Webster's dictionary defines "sticker" as "one that adheres or causes adhesion." Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the light reflective stickers disclosed by Bass to make the clip disclosed by Hatayan in order that the clip be made easily locatable.

9. Claims 3, 14, & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jio in view of Beebe (U.S. Patent 5669327).

Jio discloses all of the instant claimed invention as stated above in the rejection of claims 10, 15, 16, & 18, but does not disclose on an outer surface of each of said extension arms is light reflective paint.

Beebe discloses a biodegradable trail marker (10) which is coated with a light reflective dye/paint in order to be easily identified at night (col. 2 line 10-13; col. 3 line 6). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the dye/paint coating disclosed by Beebe to the outer surface of said extension arms disclosed by Jio in order to be easily identified at night.

10. Claims 11 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jio in view of Ryder (U.S. Patent 3685482).

Jio discloses all of the instant claimed invention as stated above in the rejection of

claims 10, 15, 16, & 18, but does not disclose the plastic is made of an orange light reflective material.

Ryder discloses a trail marker (10) made of plastic colored with a orange pigment to reflect light in order to make it readily visible over considerable distances (col. 2 lines 29-34). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the orange pigment coloring the trail marker disclosed by Ryder to the clip disclosed by Jio in order to make it readily visible over considerable distances.

11. Claims 22 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posey in view of Beebe.

Posey discloses all of the instant claimed invention as stated above in the rejection of claims 10 & 21, but does not disclose on an outer surface of each of said extension arms is light reflective orange paint.

Beebe discloses a biodegradable trail marker (10) which is coated with an orange light reflective dye/paint in order to be easily identified at night (col. 2 line 10-13; col. 3 line 6). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the dye/paint coating disclosed by Beebe to the outer surface of said extension arms disclosed by Posey in order to be easily identified at night.

12. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jio & Bass as applied to claims 1, 2, 4, 5, 7-9, 12, & 13 above, and further in view of Ryder.

Jio & Bass disclose all of the instant claimed invention as stated above in the rejection of claims 1, 2, 4, 5, 7-9, 12, & 13, but do not disclose the clip member is orange.

Ryder discloses a trail marker (10) made of plastic colored with a orange pigment to reflect light in order to make it readily visible over considerable distances (col. 2 lines 29-34). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the

invention was made to add the orange pigment coloring the trail marker disclosed by Ryder to the clip disclosed by Jio & Bass in order to enhance its visibility over considerable distances.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seale et al discloses a clothespin (U.S. Patent D145679). MacCaferrri discloses a plastic clothespin (U.S. Patent 2429557). Petertil et al. discloses an integral clamp (U.S. Patent 3453700). Flowerday discloses a wire marker (U.S. Patent 3785337). Britt et al. discloses phosphorescent escape route indicator (U.S. Patent 4401050). Lovelace discloses a reflective trail marker (U.S. Patent D357428). Percle discloses an easily carried night and day trail marker (U.S. Patent 2002/015948). Stelmach discloses distress signaling (U.S. Patent 2003/0094127).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis  
Examiner  
Art Unit 2859

tmr  
October 15, 2004



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CHRISTOPHER W. FULTON  
PRIMARY EXAMINER